

## ***PROPOSED CHANGES TO SPECIAL EDUCATION RULES***

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Special education programs in the State of Michigan are primarily regulated according to three sources of authority: the Federal Individual with Disabilities Education Act (IDEA), the State Revised School Code, and State Administrative Rules for Special Education. At the present time, an energized debate is occurring throughout the State generated by proposed changes in the administrative rules, which will affect approximately 220,000 students now receiving special education programs and services.

The Michigan Department of Education (DOE) Office of Special Education and Early Intervention Services has stated that the proposed changes will "bring the state rules into alignment with federal law and regulations... [and] will offer flexibility in program design while meeting individual student needs". This article briefly describes the process by which administrative rules are changed, the time line of events surrounding the proposed rule changes, and the major issues under discussion. A copy of all changes proposed to the Administrative Rules for Special Education may be found on the Internet at [www.mde.state.mi.us/off/sped/](http://www.mde.state.mi.us/off/sped/).

An administrative rule is an agency's written regulation, statement, standard, policy, ruling, or instruction that has the effect of law. A State agency writes rules under authority of State statute, the Michigan Administrative Procedures Act, the Michigan Constitution, and applicable Federal law. In this instance, the DOE has 130 Administrative Rules for Special Education currently in place. Examples of **existing** Special Education rules include:

- R 340.1736 Paraprofessional personnel may be employed to assist special education professional personnel pursuant to the intermediate school district plan.
- R 340.1741 Programs for the emotionally impaired shall have not more than 10 students in the classroom at any one time, and the teacher shall be responsible for the educational programming for not more than 15 different students.

To modify, create, or delete administrative rules, an agency first must file a request for rule-making with the Office of Regulatory Reform (ORR), within the Executive Office, and receive its approval to proceed. Then, public hearings on the proposed rules and a period of public comment are scheduled and announced. Once the hearings are complete, an analysis of public comment is prepared. During this process, the proposed rules are forwarded to the Joint Committee on Administrative Rules (JCAR), which may consider the rules and must share them with the appropriate House and Senate standing committees. (Specific to the proposed Special Education rule changes, the public comment analysis will be presented to the Special Education Advisory Committee, which will advise the Superintendent of Public Instruction on any aspect of the proposed rules.)

Final recommendations on the proposed rules will be forwarded in this case to the Superintendent, who then will submit the proposed rules to the ORR and to the Legislative Service Bureau for formal and legal approval. Once the rule changes have these approvals, they will be transmitted to JCAR, which will have an opportunity to object to them. (In the event JCAR objected, legislation would have to be introduced and various scenarios could result.) If JCAR does not object, the ORR will file the rules with the Secretary of State. The rules will be effective seven days after the filing date, unless the rules set a later date.

On February 14, 2001, the DOE submitted the draft proposed changes of several Administrative Rules for Special Education and Complaint Procedures under Part C of the IDEA to the ORR, which approved the draft on March 13, 2001. In the meantime, on March 2, 2001, the DOE announced a series of public hearings and a period of public comment (through April 16, 2001) on the proposed changes. On April 12, 2001, the State Board of Education recommended that the deadline for public comment for special education rule revisions be extended to June 15, 2001. Five days later, the Superintendent of Public Instruction extended the period of public comment on the proposed changes through May 16, 2001. A lawsuit filed on behalf of persons with disabilities (requesting more time to understand and comment on the proposed revisions) resulted in an April 27 ruling by Ingham Circuit Court Judge Lawrence Glazer that further extended the period of public comment through September 30, 2001.

Once the period of public comment is concluded at the end of September, the DOE staff will analyze and prepare a summary of all comments submitted. This analysis will take several months, and the resulting summary will provide guidance relative to technical changes, textual clarifications, and other changes that may be needed. The State Superintendent will then make final recommendations on the proposed rules and forward them to the ORR. If substantive changes are included, the process must begin anew with public hearings, public comment, etc., as described above. If nonsubstantive changes are recommended, and approved by the ORR, a copy of the final rules will be forwarded to JCAR. If JCAR does not file a notice of objection, the ORR will officially file the rules with the Secretary of State, and they will take effect seven days after the filing or on a later date if specified within the text of the rules. The DOE has one year after September 30, 2001, to complete this process.

According to the DOE, the proposed rules are based on Federal regulations implementing the IDEA, recommendations from the Special Education Task Force (1994), a staff analysis of those recommendations, and staff experience with requests for waivers to the existing Administrative Rules for Special Education. Some of the proposed rule changes have generated more debate and controversy than others have. These include, for example:

- creating programs for students based on educational needs, rather than categories of impairment (e.g., there would no longer necessarily exist a "Hearing Impaired Program" classroom, but instead a classroom of students with differing disabilities but similar educational needs);
- replacing specific caseloads (i.e., classroom student/teacher ratios) based on impairment categories with an intermediate school district (ISD)-wide student/teacher instructional ratio;
- eliminating the prohibition under which special education teachers may not teach and provide consultation services at the same time; and
- eliminating the distinction between severely mentally impaired, educable mentally impaired, and trainable mentally impaired, and consolidating the three categories into a single eligibility category of Cognitive Impairment.

An additional concern relates to the lack of a rule expressly providing enough implementation time for ISDs.

The Office of Special Education within the Department of Education will review public comment on these and other issues, and will submit a final package of proposed rule changes for review as described earlier. Needless to say, changes in rules governing Special Education in Michigan, affecting 220,000 students from birth to age 26, will continue to generate discussion. It is hoped that this article clarifies the administrative rules process and time line, and describes some of the issues at stake.